

§ 7B-506. Hearing to determine need for continued nonsecure custody.

(a) No juvenile shall be held under a nonsecure custody order for more than seven calendar days without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, custodian, or caretaker and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the parties the right to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The petitioner shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings.

(c) The court shall be bound by criteria set forth in G.S. 7B-503 in determining whether continued custody is warranted.

(c1) In determining whether continued custody is warranted, the court shall consider the opinion of the mental health professional who performed an evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual.

(d) If the court determines that the juvenile meets the criteria in G.S. 7B-503 and should continue in custody, the court shall issue an order to that effect. The order shall be in writing with appropriate findings of fact and signed and entered within 30 days of the completion of the hearing. The findings of fact shall include the evidence relied upon in reaching the decision and purposes which continued custody is to achieve.

(e) If the court orders at the hearing required in subsection (a) of this section that the juvenile remain in custody, a subsequent hearing on continued custody shall be held within seven business days of that hearing, excluding Saturdays, Sundays, and legal holidays when the courthouse is closed for transactions, and pending a hearing on the merits, hearings thereafter shall be held at intervals of no more than 30 calendar days.

(f) Hearings conducted under subsection (e) of this section may be waived only with the consent of the juvenile's parent, guardian, custodian, or caretaker, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

(g) In addition to the hearings required under this section, any party may schedule a hearing on the issue of placement.

(g1) The provisions of G.S. 7B-905.1 shall apply to determine visitation.

(h) At each hearing to determine the need for continued custody, the court shall determine the following:

- (1) Inquire as to the identity and location of any missing parent and whether paternity is at issue. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent, as well as efforts undertaken to establish paternity when paternity is an issue. The order may provide for specific efforts aimed at determining the identity and

location of any missing parent, as well as specific efforts aimed at establishing paternity.

- (2) Inquire about efforts made to identify and notify relatives as potential resources for placement or support and as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter.
- (2a) If the court does not place the juvenile with a relative, the court may consider whether nonrelative kin or other persons with legal custody of a sibling of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. The court may order the department to notify the juvenile's State-recognized tribe of the need for nonsecure custody for the purpose of locating relatives or nonrelative kin for placement. The court may order placement of the juvenile with nonrelative kin or other persons with legal custody of a sibling of the juvenile if the court finds the placement is in the juvenile's best interests.
- (3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the assessment conducted under G.S. 7B-302 and any actions taken or services provided by the director for the protection of the other juveniles. (1979, c. 815, s. 1; 1981, c. 469, s. 13; 1987 (Reg. Sess., 1988), c. 1090, s. 4; 1994, Ex. Sess., c. 27, s. 1; 1997-390, ss. 5, 6; 1998-229, s. 4; 1998-202, s. 6; 1998-229, ss. 4.1, 21; 1999-318, s. 5; 1999-456, s. 60; 2001-208, ss. 16, 24; 2001-487, s. 101; 2003-337, s. 9; 2005-55, s. 11; 2007-276, s. 1; 2013-129, s. 14; 2015-136, s. 6; 2017-161, s. 7.)